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c 132 Mortmain and Charitable Uses Act

Ontario

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CHAPTER 132.

The Mortmain and Charitable Uses Act.

1.—(1) In this Act,

Interpreta-
tion.

(a) "Assurance" shall include a gift, conveyance, ap-
pointment, lease, transfer, settlement, mortgage,
charge, incumbrance, devise, bequest and every
other assurance by deed, will or other instrument;
and "Assure" and "Assuror" shall have meanings
corresponding with assurance;

"Assurance."

(b) "Will" shall include codicil;

"Will."

(c) "Land" shall include tenements and hereditaments
corporeal and incorporeal of whatever tenure, but
not money secured on land, or other personal estate
arising from or connected with land;

"Land."

(d) "Full and valuable consideration" shall include
such a consideration either actually paid upon or
before the making of the assurance, or reserved
or made payable to the vendor or any other person
by way of rent, rent charge, or other annual pay-
ment, in perpetuity, or for any term of years, or
other period, with or without a right of re-entry
for non-payment thereof, or partly paid and partly
reserved, as aforesaid.

"Full and
valuable con-
sideration."
Imp. Acts 51
52 Vict. c. 42,
s. 10; and 54-
55 Vict. c. 73,
s. 3.

(2) The following shall be deemed to be charitable uses
within the meaning of this Act,—

Charitable
uses.
Imp. Act,
43 Eliz. c. 4,
s. 1.

(a) The relief of poverty;

(b) Education;

(c) The advancement of religion; and

(d) Any purpose beneficial to the community, not fall-
ing under the foregoing heads. R.S.O. 1914,
c. 103, s. 2.

PART I.

MORTMAIN.

General prohibition against mortmain.

2. Land shall not be assured to or for the benefit of, or acquired by or on behalf of any corporation in mortmain, otherwise than under the authority of a license from His Majesty, or of a statute for the time being in force, and if any land is so assured, otherwise than as aforesaid, the land shall be forfeited to His Majesty from the date of the assurance, and His Majesty may enter on and hold the land accordingly. R.S.O. 1914, c. 103, s. 3.

Forfeiture. Imp. Act. 51-52 Vict. c. 42, s. 1.

Power to grant licenses in mortmain.

3. The Lieutenant-Governor in Council, if and when, and in such form as he thinks fit, may grant to any person or corporation a license to assure land in mortmain in perpetuity or otherwise, and may grant to any corporation a license to acquire land in mortmain, and to hold such land in perpetuity or otherwise. R.S.O. 1914, c. 103, s. 4.

Imp. Act 51-52 Vict. c. 42, s. 2.

Saving for rents and services.

Imp. Act 51-52 Vict. c. 42, s. 3.

4. No entry or holding by, or forfeiture to His Majesty, under this Part, shall merge or extinguish or otherwise affect any rent or service which may be due in respect of any land to His Majesty. R.S.O. 1914, c. 103, s. 5.

Regulations by Order-in-Council.

5.—(1) The Lieutenant-Governor in Council may make regulations respecting,—

Evidence upon application.

(a) the evidence required, upon the application for a license in mortmain, as to the creation of the corporation, its powers and objects and its existence as a valid and subsisting corporation;

Service of process.

(b) the appointment and continuance by the corporation of a person or corporation as its representative in Ontario on whom service of process, notices or other proceedings may be made, and the powers to be conferred on such representative;

Forms, duration, etc

(c) the forms, duration and extent of licenses, and the forms of powers of attorney, applications, notices, statements, returns and other documents relating to applications and other proceedings under this Act.

Orders as to particular cases.

(2) The Lieutenant-Governor in Council may make orders as to particular cases where the general regulations may not be applicable or where they would cause unnecessary inconvenience or delay.

Proof to be furnished on application.

(3) Upon the application for a license in mortmain the applicant shall establish to the satisfaction of the Minister, or such other officer as may be charged by him to report there-

on, that the provisions of this Act and the regulations have been complied with; and the Minister, Deputy Minister or such other officer may, for that or for any other purpose under this Act, take evidence under oath.

(4) There shall be paid to His Majesty for the public use ^{Fees.} of Ontario for every license such fees as may be prescribed by the Lieutenant-Governor in Council. 1921, c. 46, s. 2, *part*.

PART II.

CHARITABLE USES.

6. Save as herein otherwise provided, every assurance, other than by will, of land or personal estate to be laid out in the purchase of land to or for the benefit of any charitable use shall be void unless made ^{Conditions under which assurances may be made to charitable uses.}

- (a) to take effect in immediate possession for such charitable use;
- (b) without any power of revocation, reservation, condition or provision for the benefit of the assurator or of any person claiming under him; and
- (c) at least six months before the death of the assurator, and if of stock in the public funds by transfer thereof in the public books kept for the transfer of stock at least six months before such death;

Provided that the assurance or any instrument forming ^{Proviso.} part of the same transaction may contain all or any of the following conditions, so however that they reserve the same benefits to persons claiming under the assurator as to the assurator himself, namely;

- (i) the grant or reservation of a peppercorn or other nominal rent;
- (ii) the grant or reservation of mines or minerals;
- (iii) the grant or reservation of any easement;
- (iv) covenants or provisions as to the erection, repair, position, or description of buildings, the formation or repair of streets or roads, or as to drainage or nuisances, and covenants or provisions of the like nature for the use and enjoyment as well of the land comprised in the assurance as of any other adjacent or neighbouring land;
- (v) a right of entry on non-payment of any such rent or on breach of any such covenant or provision;
or

- (vi) any stipulations of the like nature for the benefit of the assurator or of any person claiming under him; and

Proviso.

Provided that nothing in this section contained shall apply to or affect any such assurance made for full and valuable consideration. R.S.O. 1914, c. 103, s. 6.

Necessity
for sale.

7.—(1) Subject to the provisions hereinafter contained where land is assured otherwise than by will to or for the benefit of any charitable use the same shall notwithstanding anything contained in the deed or other instrument of assurance be sold within two years from the date of the assurance or within such extended period as may be determined by a judge of the Supreme Court. R.S.O. 1914, c. 103, s. 7 (1), *part*.

Idem.

(2) If the land is not sold within the two years or within such extended period it shall vest forthwith in the Public Trustee and subsection 2 of section 10 shall apply thereto. R.S.O. 1914, c. 103, s. 7 (2); 1927, c. 28, s. 7 (1).

When
sanctioned.

(3) A judge of the Supreme Court, if satisfied that the land so assured is required for actual occupation for the purposes of the charity and not as an investment, may by order sanction the retention of such land. R.S.O. 1914, c. 103, s. 7 (3), *part*.

PART III.

EXEMPTIONS.

Definitions.

8.—(1) In this section,

"Public
park."

- (a) "Public park" shall include any park, garden, or other land dedicated or to be dedicated to the recreation of the public;

"School."

- (b) "School" shall mean a school, or department of a school, at which education is given in literature, art, science or mathematics, or a vocational or technical school;

"School
house."

- (c) "School house" shall include the teacher's dwelling house, the playground, if any, and the offices and premises belonging to or required for a school;

"Public
museum."

- (d) "Public museum" shall include buildings used, or to be used, for the preservation of a collection of paintings or other works of art, or of objects of natural history, or of mechanical, scientific or philosophical inventions, instruments, models or designs, and dedicated or to be dedicated to the recreation of the public, together with any libraries, reading rooms, laboratories and other offices

and premises used or to be used in connection therewith. R.S.O. 1914, c. 103, s. 8 (1); 1927, c. 28, s. 7 (2).

(2) Notwithstanding anything in this Act, land or personal estate to be laid out in the purchase of land, may be assured for the following purposes, Assurances for a public park, school, or museum.

- (a) for a public park;
- (b) for a public museum;
- (c) for a public library;
- (d) for a school or school house.

(3) Land assured for the purposes of a school or school house and not required for actual use and occupation for such purposes or the part thereof not so required shall be sold within two years from the date of the assurance or, in the case of a will, from the death of the testator, or such extended period as may be determined by a judge of the Supreme Court, and the provisions of subsection 2 of section 10 and of section 12 shall apply. R.S.O. 1914, c. 103, s. 8 (2, 3). Sale of land assured for school if not required for actual use.

9. Sections 2 and 6 shall not apply to the following assurances,— Assurances for certain universities, colleges.

- (a) an assurance of land or personal estate to be laid out in the purchase of land, to or in trust for any incorporated university, college or school in Ontario, or for the support and maintenance of the students thereat;
- (b) an assurance, otherwise than by will, to trustees on behalf of any society or body of persons, incorporated or unincorporated, associated together for religious purposes, or for the promotion of education, art, literature, science or other like purposes, of land not exceeding two acres, for the erection thereon of a building for such purposes, or any of them, or whereon a building used or intended to be used for such purposes, or any of them, has been erected. R.S.O. 1914, c. 103, s. 9. Imp. Act. 51-52 V. c. 42, s. 7.

PART IV.

LAND DEVISED BY WILL.

10.—(1) Land may be devised by will to or for the benefit of any charitable use, but, except in the cases provided for by sections 8 and 9 and except as herein otherwise provided, shall, notwithstanding anything in the will contained to the contrary, be sold within two years from the death of the testator, or such extended period as may be determined by a judge of the Supreme Court. R.S.O. 1914, c. 103, s. 10 (1). Power to devise land for charitable use. Necessity for sale.

Where land remains unsold after expiration of two years.

(2) So soon as the two years or such extended period shall have expired without the completion of the sale of the land, the land shall vest forthwith in the Public Trustee who shall cause the same to be sold, with all reasonable speed and after payment of the costs and expenses incurred in or connected with such sale and proceedings shall pay the proceeds to the trustees for the charity. 1927, c. 28, s. 7 (3).

Personal estate directed to be laid out in land.

11. Any personal estate by will directed to be laid out in the purchase of land to or for the benefit of any charitable use, shall, except as hereinafter provided, be held to or for the benefit of the charitable use as though there had been no direction to lay it out in the purchase of land. R.S.O. 1914, c. 103, s. 11.

Power to retain land in certain cases.

12. A judge of the Supreme Court, if satisfied that land devised by will to or for the benefit of any charitable use, or proposed to be purchased out of personal estate by will directed to be laid out in the purchase of land, is required for actual occupation for the purposes of the charity, and not as an investment, may, by order, sanction the retention or acquisition, as the case may be, of such land. R.S.O. 1914, c. 103, s. 12, *part*.

PART V.

GIFTS AND BEQUESTS TO CERTAIN PUBLIC BODIES.

Power of certain public bodies to accept gifts to charitable uses.

13.—(1) The Government of Ontario, a municipal corporation, a school board, a public library board or association, a public hospital board and trustees empowered to administer or hold property for charitable uses may have, take, hold and enjoy by gift, grant, devise, conveyance or bequest real or personal property of any nature or kind and wherever situate, whether within or without Ontario, or the proceeds thereof upon the terms expressed in the gift, grant, devise, bequest or conveyance whereby the same is given, granted, devised, bequeathed or conveyed to such body. R.S.O. 1914, c. 103, s. 14 (1).

Agreement with donor as to administration.

(2) Any such body may, subject always to the provisions of the Act by or under the authority of which it exists and to any law regulating or limiting its power to contract debts, enter into an agreement for the holding, management, administration or disposition of any such property with the person giving, granting, conveying, devising or bequeathing the same to such public body upon such terms as may be agreed upon between the parties to any such gift, grant, devise, bequest or conveyance. R.S.O. 1914, c. 103, s. 14 (2); 1914, c. 2, Sched. (22).

(3) Land so given, granted, devised, bequeathed or conveyed and not required for actual use and occupation for the purposes of the trust upon which it was given, granted, devised, conveyed or assured to such public body shall be sold within two years from the date of the gift, grant, devise, conveyance or assurance or, in the case of a will, from the death of the testator, or such extended period as may be determined by a judge of the Supreme Court, and the provisions of subsection 2 of section 10 and of section 12 shall apply. R.S.O. 1914, c. 103, s. 14 (3), *part*.

Necessity for sale within two years.

(4) This section shall apply to gifts, grants, devises, bequests and conveyances heretofore made as well as to such as may hereafter be made. R.S.O. 1914, c. 103, s. 14 (4).

Retroactive effect of section.

PART VI.

SUPPLEMENTAL.

14.—(1) In every case of a breach or supposed breach of any trust created for charitable purposes, or whenever the direction or order of a court shall be deemed necessary for the administration of any trust for charitable purposes, any two or more persons may present a petition to the Supreme Court stating such complaint and praying such relief as the nature of the case may require, and the Court may hear such petition in a summary way, and upon such affidavits, or such other evidence as shall be produced upon such hearing, may determine the same, and make such order therein, and with respect to the costs of such application, as shall seem just; and any order so made shall be subject to appeal as if made in an action.

Procedure in cases of breach of a charitable trust, etc., or where order necessary for administration.

(2) Every such petition shall be signed by the persons preferring the same in the presence of and shall be attested by their solicitor, and shall be submitted to and may be allowed by the Attorney-General, and such allowance shall be certified by him before any such petition shall be presented. R.S.O. 1914, c. 103, s. 15.

Execution of petition and certificate by Attorney-General. Imp. 52 Geo. 3, c. 101, s. 1.

15. Nothing in this Act shall apply so as to limit or restrict the right possessed by any corporation under any other Act, or affect any charter or license in force at the passing of this Act enabling land to be assured or held in mortmain. R.S.O. 1914, c. 103, s. 16.

Saving for existing licenses, etc.